

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BIODIVERSITY CONSERVATION ALLIANCE,

et al.,

Plaintiffs,

vs.

GALE NORTON, et al.,

Defendants.

Civ. No. 1:04-CV-02026 (GK)

[PROPOSED] ORDER

Before the Court is Plaintiffs' Motion for Summary Judgment on Plaintiffs' Fourth, Fifth and Sixth causes of action. In these three causes of action, Plaintiffs, several conservation organizations and concerned individuals, challenge the failure of Defendants, Secretary of Interior Gale Norton and Acting Director of the United States Fish and Wildlife Service Matthew J. Hogan, to make findings, pursuant to 16 U.S.C. § 1533(b)(3)(A), on whether the petitions to list the Gunnison's prairie dog, the Black Hills mountainsnail and Uinta mountainsnail under the Endangered Species Act (ESA) presents substantial scientific and commercial information indicating that listing may be warranted. These findings under 16 U.S.C. § 1533(b)(3)(A) are commonly referred to as "90-day findings" because the statute requires the findings be made within 90 days after receiving the petition, "to the maximum extent practicable." *Id.* The scope of the inquiry necessary to make a 90-day finding is relatively narrow. See e.g. Center for Biological Diversity v. Morgenweck, 351 F. Supp. 2d 1137, 1142-1144 (D.Colo. 2004).

Having reviewed the parties' arguments, the Court finds and concludes that even though the Secretary has discretion to take more than 90 days to make a 90-day finding if it is not

practicable to make the finding within 90 days, 16 U.S.C. § 1533(b)(3)(B) limits the discretion which 16 U.S.C. § 1533(b)(3)(A) confers on the Defendants with regard to the timing of the 90-day finding. The plain statutory language prohibits Defendants from taking more than twelve months from the date of receipt of such a petition to issue a 90-day finding. See 16 U.S.C. § 1533(b)(3)(A) & (B). Accord Biodiversity Legal Foundation v. Badgley, 309 F.3d 1166, 1175 (9th Cir. 2002). To hold otherwise would allow the Secretary to eviscerate the mandatory 12 month deadline in 16 U.S.C. § 1533(b)(3)(B) by indefinitely delaying making a 90-day finding under 16 U.S.C. § 1533(b)(3)(A). Such an interpretation would be contrary to Congress' intent in enacting the ESA as well as the established rule that courts are to interpret a statute so as to give meaning to all of its provisions. See Biodiversity Legal Found. v. Badgley, 309 F.3d at 1175; Colautti v. Franklin, 439 U.S. 379, 392 (1979).

It is undisputed that it has been more than 12 months since Defendants received Plaintiffs' petitions to list the Gunnison's prairie dog, Black Hills mountainsnail and Uinta mountainsnail. It is also undisputed that Defendants have yet to make 90-day findings for these three petitions.

Therefore, it is ORDERED that Plaintiffs' Motion for Summary Judgment on Plaintiffs' Fourth, Fifth and Sixth causes of action is GRANTED.

It is FURTHER ORDERED that the Secretary of the Department of the Interior and the Acting Director of the United States Fish and Wildlife Service, in their official capacities, have failed to make the required findings pursuant to 16 U.S.C. § 1533(b)(3)(A) as to the Gunnison's Prairie Dog, Black Hills mountainsnail and Uinta mountainsnail listing petition.

It is FURTHER ORDERED that Defendants shall have thirty (30) days from the date of this order to issue findings as to the Gunnison's Prairie Dog, Black Hills mountainsnail and

Uinta mountainsnail listing petitions which comply with the requirements of 16 U.S.C. §  
1533(b)(3)(A).

It is so ordered.

Dated: \_\_\_\_\_, 200\_

\_\_\_\_\_  
Gladys Kessler  
United States District Judge

**Copies via ECF to all  
counsel of record**

